

[Advisory Opinion 1998-10]

MONTGOMERY COUNTY ETHICS COMMISSION

ADVISORY OPINION

November 10, 1998

A manager in the Department of Permitting Services requested an advisory opinion on whether she could serve on the Board of Directors of the Montgomery County Students Construction Trades Foundation, Inc. Her request apparently was founded on the understanding or concern that service on the Foundation's Board constitutes "other employment" for the purposes of the Montgomery County Public Ethics Law, which prohibits a county employee from engaging "in any other employment unless the employment is approved by the Commission."¹

Pertinent Facts

The request provided the following pertinent information: 1) the Foundation is non-profit foundation established by the Montgomery County Public Schools and local businesses and professionals to promote vocational education; 2) members are not compensated; 3) the Construction Trades program permits Montgomery County public school students the experience of having a role in the development and construction of a sellable house; and 4) all proceeds from the sales of the houses are returned to the program to cover its costs.

Applicable Law

If, as the Commission understands, members of the Foundation's Board are not compensated for their service, membership on the Board does not constitute "other employment" and therefore does not require approval by the Ethics Commission.² Nevertheless, attention is called to the prohibitions set forth in the Conflicts of Interest provisions of the Ethics Law. In particular, §19A-11(a)(2) of the Ethics Law prohibits a public employee from participating in any matter if the public employee knows or reasonably should know that any party to the matter is any business in which the public employee is an *officer, director*, or trustee unless the county employee applies for and receives a waiver by the Commission.³

¹Montgomery County Code, §19A-12(a).

²For Ethics Law purposes, "*employment or employ* means engaging in an activity for compensation," and "*compensation* means any money or thing of value, regardless of form, including the sale or delivery of tangible or intangible property, that an employer pays or agrees to pay for services rendered."

³There are exceptions to this prohibition. First, if a disqualification under subsection (a) leaves less than a quorum capable of acting, or if the disqualified public employee is required by law to act or is the only person authorized to act, the disqualified public employee may participate or act if he or she discloses the nature and circumstances of the conflict. §19A-11(b)(1). Second, subsection (a) does not apply to an administrative or

Findings

Applying the applicable law to the pertinent facts presented by the requester, the Commission concluded that although the requester did not need the Commission's approval to accept the appointment, as a county employee, the requester must seek and obtain a waiver before participating, as a county employee, in any matter in which the Foundation is a party.

Furthermore, although the requester may accept the appointment, care must be taken not to violate the misuse-of-prestige-of-office provisions of §19A-14. Those provisions prohibit:

- (a) a public employee from intentionally using the prestige of his or her office for private gain or the gain of another;
- (b) a person from using an official County or agency title or insignia in connection with any private enterprise, unless expressly authorized by the Chief Administrative Officer; and
- (c) a public employee from using any County agency facility, property, or work time for personal use or for the use of another person, unless the use is generally available to the public or authorized by a County law, regulation, or administrative procedure.

Conclusion

In summary, the Ethics Law does not prohibit the requester from accepting appointment to the Board of the Montgomery County Students Construction Trades Foundation and does not require Commission approval of that service. However, depending upon the authority of the Board, the requester may be required to refrain from acting as a county employee on matters involving the Foundation, unless the requestor first obtains a waiver from the Ethics Commission with respect to a particular action or kind of action. Furthermore, the prestige-of-office provisions will prohibit the use of the requester's office, title or county time or resources to benefit the Foundation, absent appropriate authorization.

ministerial duty that does not affect an agency's decision on a matter. §19A(b)(2). Finally, subparagraph (a)(2)(a) does not apply to a public employee who is an *officer, director*, or trustee of an organization, if the public employee discloses the relationship, is not compensated by the organization, and has no managerial responsibility or fiduciary duty to the organization, no authority to approve the organization's budget; no authority to select any officer or employee of the organization; and no authority to vote on matters as a member of the governing body of the organization.